IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.966 of l995

Vijay D Wani ..... Petitioner
vs
The Cantonment Executive Officer Cantonment Board & ors..Respondents

Mr.N.P Deshpande for petitioner
Mr.V.G.Mujumdar for respondent nos.l and 2

CORAM: A.P.SHAH & V.K.TAHILRAMANI J.

Dated l0.l.2005.

Oral Judgement; (Per A.P.Shah J.)

l. The petitioner was appointed as Junior Engineer (Electrical) with Pune Cantonment Board with effect from 9.3.l977 and later on he was re-designated as Sectional Engineer (Electrical). In l987 the Cantonment Board decided to purchase N.C.T pipes for street lighting. For that purpose the petitioner prepared an estimate.During the same period he also prepared estimates for electrification of S.V.P Cantonment General Hospital as well as for the purpose of air conditioning of the Operation Theatre of the very same hospital. The petitioner had also prepared the estimate for purchase of transformer for the same hospital. The Cantonment Board wanted him to prepare estimates of sewerage pumps for Ghorpadi and Wanawadi Bazar Draining Scheme. The Board also

wanted estimates for cables and street lights at Prince of Wales Drive. In the capacity of Sectional Engineer (Electrical) the petitioner had also prepared estimate for all these items. It appears that on ll.8.l987 the office of the Cantonment Board through the Chief Executive Officer served him a Memorandum alleging that the above-mentioned estimates prepared by the petitioner suffer from total non application of mind. The petitioner offered his explanation to the said Memorandum vide his reply dated 25.8.l987. The explanation was not accepted by the Cantonment Board and a Chargesheet was issued to the petitioner on l3.l.l988 containing same charges as mentioned in the Memorandum of ll.8.l987. The petitioner was put under suspension on 25.4.l988. The Cantonment Board appointed an Enquiry Committee to enquire into the alleged misconduct of the petitioner. The Enquiry Committee found the charges proved by majority of two versus one as the third member differed on items 2 and 4. By a resolution dated 25.l0.l99l the Cantonment Board considered the Enquiry Committee’s report and accepted it. By order passed on the very same day the petitioner was removed from service. The penalty inflicted was for major misconduct as

described under Rule ll(2)(vii) of the Cantonment Fund Servants Rules, l937 (CFS Rules) i.e removal from service which shall not be a disqualification for future employment under the Board in whose service the delinquent was at the time of such removal or any other Board. The petitioner filed an appeal under Rule l4(l) of the CFS Rules to the GOC-in-Chief, Southern Command,Pune, who dismissed the appeal vide order dated 8.7.l992. The petitioner preferred further appeal to the Government of India, Ministry of Defence, represented by the Secretary to Government under Rule l5 of the CFS Rules. By order dated 22.l2.l994 passed by the Under Secretary, Government of India, Ministry of Defence, New Delhi the appeal of the petitioner came to be dismissed.

2. Mr.Deshpande, learned counsel appearing for the petitioner raised two submissions before us. First, Mr. Deshpande contended that all the three members of the Enquiry Committee happened to be members of the Board in which capacity they had scrutinised , approved and accepted the estimates prepared by the petitioner when the estimates were placed before the Cantonment Board. Since they were interested in the matter, this is a case of

the enquiry being vitiated on the ground of bias. Secondly Mr. Deshpande contended that the members of the Enquiry Committee who submitted report on the alleged misconduct of the petitioner themselves participated in the meeting of the Cantonment Board and voted in favour of their own report while the Board was considering the issue of inflicting punishment on the petitioner. The participation of the members of the Enquiry Committee in the Board meeting when their report was under consideration completely vitiates the inquiry. Mr. Deshpande placed heavy reliance on the decision of the Supreme Court in Institute of Chartered Accountants of India vs L K Ratna and ors, (l986) 4 SCC 537. In reply Mr Mujumdar,learned counsel appearing for the respondent nos.l and 2 submitted that the enquiry proceedings would not be vitiated merely because the members who had approved the estimates prepared by the petitioner were members of the Enquiry Committee. The petitioner had not objected to the constitution of the Enquiry Committee or appointment of the members on the Enquiry Committee and, therefore, the allegation that the members of the Enquiry Committee were biased is without any basis. Mr. Mujumdar submitted that the decision in Institute of Chartered Accountants vs. L K

Ratna (supra) has no application to the facts of the present case.

3. We are inclined to agree with Mr. Mujumdar that the inquiry proceedings are not vitiated merely because the members who had approved the estimates prepared by the petitioner were members of the Enquiry Committee. The petitioner had appeared in person before the Enquiry Committee and defended his case and participated in the inquiry proceedings.During the entire proceedings of the departmental inquiry the petitioner never complained about any of the members of the Enquiry Committee nor objected to the constitution of the Committee. The petitioner has not made any specific allegation against any Board member of the Enquiry Committee nor has imputed any malafide or ill-will to any of the members of the Enquiry Committee. Therefore the contention of Mr. Deshpande that the members were biased must be rejected.

4. The second contention of Mr. Deshpande is that there was violation of principles of natural justice in as much as all the three members of the Enquiry Committee participated in the Board meeting

actively and voted during the Board meeting,when their own report of inquiry held against the petitioner was under consideration. The question is whether the resolution of the Board holding petitioner guilty of misconduct can be said to be vitiated by bias because members of the Enquiry Committee participated in this proceeding. Rule l2 of the CFS Rules lays down that whenever disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against the servant, it may itself inquire into or appoint under the said Rules, as the case may be, any authority to inquire into the truth thereof. By resolution dated 30.3.l988 the disciplinary authority i.e. Board decided to appoint an Enquiry Committee to enquire into the alleged misconduct of the petitioner. The Enquiry Committee consisted of Mr. E.P.Ganla (Vice President) (2) Mr. Mahendra Maurya (Garisson Engineer North), and (3) Mr. V.D.Sanghvi, member of the Board. The Board as disciplinary authority is vested with power to punish an employee who is found to be guilty of misconduct. There is nothing in the Rules, however, to indicate whether members of the enquiry committee should be excluded when the Board enters

upon its task. It is not disputed before us that the nature of function discharged by the Board in rendering its finding is quasi judicial. The petitioner whose conduct has been the subject of enquiry by the Enquiry Committee ending in conclusion adverse to him can legitimately entertain an apprehension that the Committee members would naturally maintain the opinion expressed by them in their report and would press for acceptance of the report by the Board. In such circumstances the possibility of partisan consideration being accorded to the report seem to be eminent. Therefore we are inclined to accept the submission of Mr. Deshpande that the decision of the Board finding the petitioner guilty of misconduct is vitiated by participation of the members of the Enquiry Committee.

5. In Institute of Chartered Accountants of India vs L K Ratna and ors(supra) similar question arose with regard to the conduct and procedure of disciplinary proceedings taken under the Chartered Accountants Act, l949. The question was when the Council proceeds to consider the report of the disciplinary committee, is the proceeding vitiated by the presence of the members of the disciplinary

committee who include the President and Vice President of the Council and three other members of it? Pathak J., as his Lordship then was, speaking for the Bench observed as under:

> "22. The question is whether the respective findings of the Council holding the three members guilty of misconduct can be said to be vitiated by bias because the members of the Disciplinary Committee participated in those proceedings. As has been pointed out, section l7 of the Act provides for a Disciplinary Committee, consisting of the President and the Vice President ex-officio of the Council, who will be the Chairman and Vice Chairman respectively of the Disciplinary Committee, and three other members of the Council, two of them being elected by the Council to the Committee,and the third being nominated by the Central Government from amongst the persons nominated to the Council by the Central Government. Therefore, all the five members of the Disciplinary Committee are drawn from the Council.

23. Now the Council is vested with power under Section 2l to find whether the member is guilty of misconduct. There is nothing in section 2l of the Act, however, to indicate whether the members of the Disciplinary Committee should be excluded when the Council enters upon its task. The answer must be found from the general scheme of the Act and the fundamental principles of law.

24.....

25. We must remember that the President and the Vice President of the Council and three members of the Council compose the Disciplinary Committee. The President and the Vice President do certainly hold significant status in the meetings of the Council. A member whose conduct has been the subject of enquiry by the Disciplinary Committee ending in conclusions adverse to him can legitimately entertain an apprehension that the President and the Vice President of the Council and the other members of the Disciplinary Committee would

> maintain the opinion expressed by them in their report and would press for the acceptance of the report by the Council. To the member whose conduct has been investigated by the Committee, the possibility of the Council disagreeing with the report in the presence of the President and the Vice President and the other members of the Committee would seem rather remote. His fears would be aggravated by the circumstances that the President would preside over the meeting of the Council, and would thus be in a position to control and possibly dominate the proceedings during the meeting. We do not doubt that the President and the Vice President, and also the three other members of the Disciplinary Committee,should find it possible to act objectively during the decision making process of the Council. But to the member accused of misconduct, the danger of partisan consideration being accorded to the report would seem very real indeed".

6. In the instant case participation of the members of the Enquiry Committee in the Board

meeting when the report was under consideration is a matter of record and is an admitted position. In the light of the law laid down by the Supreme Court in Institute of Chartered Accountants of India vs L K Ratna and ors (supra), we are of the opinion that the resolution passed by the Board dated 25.l0.l99l is completely vitiated on account of participation of the members of Enquiry Committee the impugned resolution of the Board as well as the decision of first Appellate Authority and second Appellate Authority are quashed and set aside. In the instant case the enquiry was commenced in l988 and the petitioner is out of service for last more than l3 years. It was fairly conceded that there was no financial loss caused to the Cantonment Board. Therefore in our opinion no purpose would be served in sending back the case for fresh inquiry in the facts and circumstances of the case. The respondents are directed to reinstate the petitioner with 50% backwages and continuity of service. Rule is accordingly made absolute with no order as to costs.